

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1423

S.P. 525

In Senate, April 27, 1995

An Act to Amend the Laws Pertaining to the Regulation of Borrow Pits.

(EMERGENCY)

Reference to the Committee on Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator LORD of York.

Cosponsored by Senators: LAWRENCE of York, RUHLIN of Penobscot, Representatives: BAILEY of Township 27, BERRY of Livermore, DRISCOLL of Calais, GOULD of Greenville, GREENLAW of Standish, JACQUES of Waterville, MARSHALL of Eliot, NICKERSON of Turner, POULIN of Oakland, WHITCOMB of Waldo.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** deadlines have expired for the owners or operators
of medium-sized gravel pits to participate in the procedures for
performance standards for medium borrow pits; and

8
10 **Whereas,** standards are needed for rock quarries 2 acres or
less in size to allow quarry owners or operators to provide the
Department of Transportation with the necessary aggregate to
perform road projects during the upcoming construction season; and

12
14 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
safety; now, therefore,

18
20 **Be it enacted by the People of the State of Maine as follows:**

22 **Sec. 1. 38 MRSA §484, sub-§1,** as repealed and replaced by PL
1987, c. 812, §§10 and 18, is amended to read:

24
26 **1. Financial capacity.** The developer has the financial
capacity and technical ability to develop the project in a manner
consistent with state environmental standards and with the
provisions of this article. The commissioner may issue a permit
under this article that conditions any site alterations upon a
developer providing the commissioner with evidence that the
developer has been granted a line of credit or a loan by a
financial institution authorized to do business in this State as
defined in Title 9-B, section 131, subsection 17-A or with
evidence of any other form of financial assurance the board
determines by rule to be adequate.

36 **Sec. 2. 38 MRSA §484, sub-§3, ¶¶D and E** are enacted to read:

38
40 D. The department may issue a permit under this article for
operation of a borrow pit conditioned upon the owner or
operator of a borrow pit complying with rules pertaining to
noise within 30 days after the commencing of crushing and
screening operations.

42
44 E. Calcium chloride may be used to control dust on roads,
providing the calcium chloride is applied according to the
manufacturer's labeling guidelines.

46
48 **Sec. 3. 38 MRSA §484-A, sub-§1, ¶¶A and B,** as enacted by PL
1993, c. 350, §4, are amended to read:

2 A. April 1, 1994 ~~1995~~, for pits having reclaimed or
4 unreclaimed areas that drain externally or having reclaimed
or unreclaimed areas where internal drainage is achieved
with berms or other structures; or

6 B. October 1, 1994 ~~1995~~, for pits where all reclaimed and
8 unreclaimed lands are naturally internally drained; and

10 **Sec. 4. 38 MRSA §484-A, sub-§2**, as enacted by PL 1993, c. 350,
§4, is amended to read:

12 **2. Adherence to compliance schedule.** By October 1, 1995
14 1996:

16 A. All reclaimed and unreclaimed areas that were not
18 naturally internally drained on October 1, 1993 are
stabilized or reclaimed;

20 B. All other conditions existing on October 1, 1993 comply
with the performance standards under article 7; and

22 C. All activities conducted after filing a notice of intent
24 to comply are conducted in compliance with article 7.

26 **Sec. 5. 38 MRSA §488, sub-§15** is enacted to read:

28 15. Small road quarry. A quarry regulated by the
30 department under article 8 is exempt from review under this
article.

32 **Sec. 6. 38 MRSA §490-A, sub-§5**, as enacted by PL 1993, c. 350,
§5, is repealed and the following enacted in its place:

34 **5. Public drinking water source of supply.** "Public
36 drinking water source of supply" means any groundwater well or
38 any surface water source that directly or indirectly serves a
water distribution system that has at least 15 service
40 connections or regularly services an average of at least 25
individuals daily at least 30 days out of the year.

42 **Sec. 7. 38 MRSA §490-C, sub-§2**, as enacted by PL 1993, c. 350,
§5, is amended to read:

44 **2. Map and site plan.** A location map and site plan drawn
46 to scale showing property boundaries, stockpile areas, existing
reclaimed and unreclaimed lands, proposed maximum acreage of all
48 affected lands, all applicable private drinking water supplies or
public drinking water source of supplies and all existing or
50 proposed solid waste disposal areas;

2 **Sec. 8. 38 MRSA §490-D, sub-§§2 and 3**, as enacted by PL 1993,
c. 350, §5, are amended to read:

4
6 **2. Solid waste.** Solid waste, including stumps, wood waste
and land-clearing debris generated on the affected land must be
8 disposed of in accordance with ~~section--421--and~~ chapter 13,
including any rules adopted to implement those laws. The
10 department may not grant a variance from the provisions of this
subsection.

12 **3. Groundwater protection.** Excavation may not occur within
5 feet of the seasonal high water table. A benchmark sufficient
14 to verify the location of the seasonal high water table must be
established and at least one test pit or monitoring well must be
16 established on each 5 acres of unreclaimed land. To further
ensure adequate groundwater protection:

18 A. ~~A 300-foot~~ 200-foot separation must be maintained
20 between any ~~area--used--to--store--oils~~ excavation and any
private drinking water supply that is a point-driven well
22 and was in existence prior to that excavation;

24 B. ~~A 200-foot~~ 100-foot separation must be maintained
between any excavation and any private drinking water supply
26 that is drilled into saturated bedrock and was in existence
prior to that excavation; and

28 C. ~~A 1,000-foot separation must be maintained between any~~
30 ~~excavation and any public drinking water supply;~~ Separation
must be maintained between any excavation and any public
32 drinking water source of supply as follows:

34 (1) For systems serving a population of 500 persons or
less, the minimum separation must be 300 feet;

36 (2) For systems serving a population of 501 persons up
38 to 1,000 persons, the separation must be 500 feet;

40 (3) For systems serving a population of more than
42 1,000 persons, the separation must be 1,000 feet; and

44 (4) For any system that holds a valid filtration
waiver in accordance with the federal Safe Drinking
46 Water Act, the separation must be 1,000 feet.

48 The department may grant a variance from the provisions of
this paragraph upon consultation with the public water
supply affected by the excavation. The department may not

2 grant a waiver from the provisions of paragraph A, B or D;
and

4 D. Refueling operations, oil changes and other maintenance
activities requiring the handling of fuels, petroleum
6 products, hydraulic fluids, and other on-site activity
involving the storage or use of products ~~which~~ that, if
8 spilled, may contaminate groundwater, must be conducted in
accordance with the department's spill prevention, control
10 and countermeasures plan. Petroleum products and other
substances that may contaminate groundwater must be stored
12 and handled over impervious surfaces that are designed to
contain spills. The spill prevention, control and
14 countermeasures plan must be posted at the site.

16 ~~The department may not grant a variance from the provisions of~~
~~paragraphs A to D.~~

18 The separation distance requirements described in paragraphs A, B
20 and C do not apply when the private or public water supply is
owned by the owner of the excavation site.

22 The department may grant a variance allowing excavation between 2
24 and 5 feet of the seasonal high water table. The department may
grant a variance allowing reclamation as a pond, provided the
26 pond resulted from excavation below the seasonal high water table
prior to October 1, 1993.

28 **Sec. 9. 38 MRSA §490-D, sub-§3-A is enacted to read:**

30 **3-A. Medium borrow pits unlicensed on October 1, 1993.**
32 Notwithstanding subsection 3, the following provisions apply to a
medium borrow pit that on October 1, 1993 was not licensed under
34 article 6 and on which gravel had been extracted to a level less
than 5 feet above the seasonal high water table.

36 A. The department may not require the medium borrow pit
38 owner or operator to elevate the medium borrow pit floor to
5 feet or more above the seasonal high water table as a
40 condition of operation.

42 B. The department may permit excavation between 5 feet and
2 feet of the seasonal high water table, providing
44 sufficiently detailed information is submitted to allow the
department to determine that groundwater will not be
46 adversely affected.

48 C. The medium borrow pit owner or operator may reclaim as a
pond that area of the medium borrow pit less than 5 feet
50 above the seasonal high water table.

2 **Sec. 10. 38 MRSA §490-D, sub-§5**, as enacted by PL 1993, c.
350, §5, is repealed.

4 **Sec. 11. 38 MRSA §490-D, sub-§5-A** is enacted to read:

6 **5-A. Protected natural resources.** A natural buffer strip
8 must be maintained between the working edge of an excavation and
9 a river, stream, brook, great pond, freshwater wetland or coastal
10 wetland as defined in section 480-B. Any excavation activities
11 conducted within 100 feet of a protected natural resource
12 requires a permit under article 5-A. The width requirements for
13 natural buffer strips are as follows.

14 A. A natural buffer strip at least 100 feet wide must be
15 maintained between the working edge of the excavation and
16 the normal high water line of a great pond classified as GPA
17 or a river flowing to a great pond classified as GPA.

18 B. A natural buffer strip at least 75 feet wide must be
19 maintained between the working edge of the excavation and
20 any other water body, stream, brook or Class I or Class II
21 wetland, as defined in 06-096-CMR 310.

22 C. A natural buffer strip at least 25 feet wide must be
23 maintained between the working edge of the excavation and a
24 Class III wetland, as defined in 06-096-CMR 310.

25 For purposes of this subsection, the width of a natural buffer
26 strip is measured from the upland edge of floodplain wetlands; if
27 no floodplain wetlands are present, the width of the natural
28 buffer strip is measured from the normal high water mark of a
29 great pond, river, stream, brook or upland edge of a wetland.

30 **Sec. 12. 38 MRSA §490-D, sub-§6**, as enacted by PL 1993, c.
350, §5, is repealed.

31 **Sec. 13. 38 MRSA §490-D, sub-§6-A** is enacted to read:

32 **6-A. Public and private roads.** A natural buffer strip must
33 be maintained between the working edge of an excavation and a
34 road as follows.

35 A. A natural buffer strip at least 150 feet wide must be
36 maintained between the working edge of an excavation and a
37 road designated as a scenic highway by the Department of
38 Transportation.

39 B. A natural buffer strip at least 100 feet wide must be
40 maintained between the working edge of an excavation and any

2 public road not designated as a scenic highway by the
3 Department of Transportation.

4 C. A natural buffer strip at least 50 feet wide must be
5 maintained between the working edge of an excavation and any
6 private road or right-of-way. The width of the natural
7 buffer strip adjacent to a private road may be reduced if
8 the applicant receives written permission from the person or
9 persons having a right-of-way over the private road.

10 Except for paragraph B, the department may not grant a variance
11 from the provisions of this subsection. The department may grant
12 a variance from paragraph B, provided that the variance will not
13 result in the natural buffer strip being reduced to less than 50
14 feet between the working edge of the excavation and any road and
15 provided that the owner or operator installs visual screening and
16 safety measures as required by the department.

17 This distance is measured from the outside edge of the shoulder
18 of the road.

19 **Sec. 14. 38 MRSA §490-D, sub-§7,** as enacted by PL 1993, c.
20 350, §5, is amended to read:

21 **7. Property boundary.** A natural buffer strip at least 150
22 50 feet wide must be maintained between any excavation and a
23 property boundary, including a road right-of-way. This distance
24 may be reduced to not less than 10 feet with the written
25 permission of the affected abutting property owner or owners,
26 except that the distance may not be reduced to less than 25 feet
27 from the boundary of a cemetery or burial ground. The distance
28 buffer strip between borrow pits owned by abutting owners may be
29 reduced-to-not-less-than-50-feet eliminated with the abutter's
30 written permission, provided the elimination of this buffer strip
31 does not increase the runoff from either excavation across the
32 property boundary. All property boundaries must be identified in
33 the field by markings such as metal posts, stakes, flagging or
34 blazed trees. The department may not grant a variance from the
35 provisions of this section.

36 **Sec. 15. 38 MRSA §490-D, sub-§§11, 13 and 14,** as enacted by PL
37 1993, c. 350, §5, are amended to read:

38 **11. Traffic.** Entrances and exits of the borrow pit must be
39 located, posted and constructed in accordance with standards for
40 ~~commercial--or--industrial--entrances--of--the--Department--of~~
41 ~~Transportation~~ roadways in rules adopted by the board. Adequate
42 sight distances for entering, exiting and stopping must be
43 maintained in accordance with these standards. The department
44 may not grant a variance from the provisions of this subsection.

2 **13. Dust.** Dust generated by activities at the borrow pit,
4 including dust associated with traffic to and from the borrow
6 Dust control methods may include the application of calcium
8 chloride, providing the manufacturer's labeling guidelines are
10 followed. The department may not grant a variance from the
12 provisions of this subsection.

14 **14. Reclamation.** The affected land must be restored to a
16 condition that is similar to or compatible with the conditions
18 that existed before excavation. Reclamation should be conducted
20 in accordance with the department's best management practices for
22 erosion and sediment control, and must include:

24 A. Regrading side slopes to a slope no steeper than 2 1/2
26 horizontal feet for each vertical foot;

28 B. Establishing a vegetative cover by seeding within one
30 year of the completion of excavation. Vegetative cover is
32 acceptable if, within one year of seeding:

34 (1) The planting of trees and shrubs results in a
36 permanent stand or a stand capable of regeneration and
38 succession, sufficient to ensure a 75% survival rate;
40 and

42 (2) The planting of all materials results in permanent
44 90% ground coverage;

46 C. Removing all structures and, once no longer in
48 productive use, reclaiming all access roads, haul roads and
other support roads; and

 D. Reclaiming all affected lands within 2 years after final
grading.

 Except for paragraph A, the department may not grant a variance
from the provisions of this subsection. The department may grant
a variance from paragraph A, provided that the ~~variance will not~~
~~result in a reclaimed slope steeper than 2 horizontal feet for~~
~~each vertical feet~~ slopes exhibit substantial vegetation and are
stable. The department may not assess a fee for a request for a
variance from paragraph A.

Sec. 16. 38 MRSA §490-F, first ¶, as enacted by PL 1993, c. 350,
§5, is amended to read:

2 Before expanding a borrow pit beyond an area that exceeds a
4 total of 10 acres of reclaimed and unreclaimed land, and before
6 expanding a borrow pit beyond an area that exceeds a total of 20
8 acres of reclaimed and unreclaimed land, the owner or operator
10 shall notify the regulator of an intent to expand and must
12 request an inspection. In the same manner as prescribed in
14 section 344-B, the department shall publish a timetable for
16 responding to inspection requests and shall inspect the site
18 within that time period to determine the pit's compliance with
20 this article and other applicable laws administered by the
22 department. The department may defer an inspection for a
24 reasonable period when winter conditions at the site prevent the
26 department from evaluating an expansion request. The department
28 shall notify the owner or operator of a deferral under this
30 section. Mining activities at the pit may continue after the
32 filing of a notice of an intent to expand. The failure of a
34 regulator to conduct a site visit within a published time period
36 is not sufficient basis for a stop-work order under section
38 490-H, subsection 1.

20 **Sec. 17. 38 MRSA §§490-K and 490-L** are enacted to read:

22 **§490-K. Transfer of ownership or operation**

24 A person who purchases a borrow pit that operates under a
26 notice of intent to comply or who obtains operating authority of
28 a pit that operates under a notice of intent to comply must file
30 within 2 weeks after the purchase or the obtaining of operating
32 authority a notice of intent to comply on a form developed by the
34 department. The new owner or operator may operate the borrow pit
36 during this 2-week period without having filed a notice of intent
38 to comply, providing the new owner or operator complies with all
40 standards under this article.

34 **§490-L. Exemption from common scheme of development**

36 A borrow pit covered under this article is not part of a
38 common scheme of development when a period of 5 years or more
40 elapses between the ownership or operation of an existing borrow
42 pit and the ownership or operation of an adjacent borrow pit, the
44 acquisition of adjacent property to be used for operation of a
46 borrow pit or the development of a borrow pit on adjacent
48 property.

44 **Sec. 18. 38 MRSA c. 3, sub-c. I, art. 8** is enacted to read:

46 **ARTICLE 8**

48 **PERFORMANCE STANDARDS FOR SMALL ROAD QUARRIES**

§490-P. Definitions

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affected land" means all reclaimed and unreclaimed land, land that has or will have the overburden removed, land on which stumps, spoil or other solid waste has or will be deposited and a storage area or other land, except a natural buffer strip, that will be or has been used in connection with a quarry.

B. "Airblast" means an atmospheric compression wave resulting from the detonation of explosives, whether resulting from the motion of blasted materials or the expansion of gases from the explosion.

C. "Blast site" means the area where explosive material is handled during the loading of drilled blastholes, including the perimeter formed by the loaded blastholes and 50 feet in all directions from loaded blastholes.

D. "Blaster" means a person qualified to be in charge or responsible for the loading and firing of a blast.

E. "Blasting" means the use of explosives to break up or otherwise aid in the extraction or removal of a rock, ore or other consolidated natural formation, or in construction or demolition work.

F. "Matting" means a covering placed over load holes and adjacent areas in order to minimize generation of flyrock and limit airblast effects.

G. "Natural buffer strip" means an undisturbed area or belt of land that is covered with trees or other vegetation.

H. "Private drinking water supply" means a surface water supply, dug well or a spring or a hole drilled, driven or bored into the earth that is used to extract drinking water for human consumption and that is not part of a drinking water supply.

I. "Public drinking water source of supply" means a groundwater well or a surface water source that directly or indirectly serves a water distribution system that has at least 15 service connections or regularly services an average of at least 25 individuals daily at least 30 days out of the year.

2 J. "Quarry" means a place where rock is excavated.

4 K. "Rock" means a hard, nonmetallic material that requires cutting, blasting or similar methods of forced extraction.

6 L. "Stemming" means inert material used in a blasthole to confine the gaseous products of detonation.

8
10 **490-Q. Applicability**

12 This article applies to quarries that are of 2 acres or less including reclaimed and unreclaimed areas, if products from the quarry are used solely to supply aggregate for Department of Transportation projects.

16 This article does not apply to projects subject to quarry regulations under article 6 or a quarry within the jurisdiction of the Maine Land Use Regulation Commission. A person with a valid permit for a quarry under article 6 must operate that quarry in compliance with the terms and conditions of that permit.

22 **§490-R. Notice of intent to comply**

24 Except as provided in section 484-A, a person intending to operate a quarry under this article must file a notice of intent to comply before extracting or removing more than 1,000 cubic yards of rock or overburden from the earth within 12 successive calendar months. A notice filed under this section must be complete, submitted on forms approved by the department and mailed to the municipality where the quarry is located, the department, the Maine Historic Preservation Commission and each abutting property owner. The notice that is mailed to the department must be sent by certified mail, return receipt requested. Upon receiving the postal receipt, the owner or operator may commence operation of the quarry.

36 A notice of intent to comply is not complete unless it includes all of the following information:

40 1. Name, address and phone number. The name, mailing address and telephone number of the owner of the quarry and if different from the owner, the operator of the quarry;

44 2. Map and site plan. A location map and site plan drawn to scale showing property boundaries, stockpile areas, existing reclaimed and unreclaimed lands, proposed maximum acreage of all affected lands, all applicable private or public drinking water source of supplies and all existing or proposed solid waste disposal areas;

2 3. Parcel description. A description of the parcel
including size and deed description;

4 4. Legal interest. A copy of the lease or other document
6 showing that an operator who is not the owner has a legal right
to excavate on the property. Stumpage information does not have
to be shown;

8 5. Information on abutters. The name and address of
10 abutting property owners;

12 6. Signed statement. A statement signed and dated by the
14 owner or operator certifying the quarry will be operated in
compliance with this article; and

16 7. Fees. Any fees required by section 480-S.

18 If the department determines that a notice filed under this
20 section is not complete, the department must notify the owner or
operator no later than 45 days after receiving notice.

22 §490-S. Performance standards for quarries

24 1. Significant wildlife habitat. Affected land may not be
26 located in a significant wildlife habitat as defined in section
480-B, subsection 10 or in an area listed under the Natural Areas
Program, Title 5, chapter 383, subchapter III, article 2-A.

28 2. Solid waste. Solid waste, including stumps, wood waste
30 and land-clearing debris generated on the affected land must be
32 disposed of in accordance with chapter 13, including any rules
adopted to implement those laws.

34 3. Groundwater protection. To ensure adequate groundwater
36 protection the following setbacks must be met:

38 A. A 200-foot separation must be maintained between an
excavation and a private drinking water supply that is point
driven and was in existence prior to the excavation;

40 B. A 100-foot separation must be maintained between an
42 excavation and a private drinking water supply that is
44 drilled into saturated bedrock and was in existence prior to
the excavation;

46 C. Separation must be maintained between an excavation and
48 a public drinking water source of supply as follows:

50 (1) For systems serving a population of 500 persons or
less, the minimum separation must be 300 feet;

2 (2) For systems serving a population of 501 persons up
3 to 1,000 persons, the separation must be 500 feet;

4 (3) For systems serving a population of more than
5 1,000 persons, the separation must be 1,000 feet; and

6 (4) For any system that holds a valid filtration
7 waiver in accordance with the federal Safe Drinking
8 Water Act, the separation must be 1,000 feet; and

9 D. Refueling operations, oil changes, other maintenance
10 activities requiring the handling of fuels, petroleum
11 products and hydraulic fluids and other on-site activity
12 involving storage or use of products that, if spilled, may
13 contaminate groundwater must be conducted in accordance with
14 the department's spill prevention, control and
15 countermeasures plan. Petroleum products and other
16 substances that may contaminate groundwater must be stored
17 and handled over impervious surfaces that are designed to
18 contain spills. The spill prevention, control and
19 countermeasures plan must be posted at the site.

20 4. Natural buffer strip. Existing vegetation within a
21 natural buffer strip may not be removed. If vegetation within
22 the natural buffer strip has been removed or disturbed by
23 activities related to operation of the quarry before submission
24 of a notice of intent to comply, that vegetation must be
25 reestablished as soon as practicable after filing the notice of
26 intent to comply.

27 5. Protected natural resources. A natural buffer strip
28 must be maintained between the working edge of an excavation and
29 a river, stream, brook, great pond, freshwater wetland or coastal
30 wetland as defined in section 480-B as follows.

31 A. A natural buffer strip at least 100 feet wide must be
32 maintained between the working edge of the excavation and
33 the normal high water line of a great pond classified GPA or
34 a river flowing to a great pond classified GPA.

35 B. A natural buffer strip at least 75 feet wide must be
36 maintained between the working edge of the excavation and a
37 river, stream or brook or Class I or Class II wetland as
38 defined in department rules.

39 C. A natural buffer strip at least 25 feet wide must be
40 maintained between the working edge of the excavation and a
41 Class III wetland as defined in department rules.

42

2 Any excavation activity conducted within 100 feet of a protected
3 natural resource requires a permit under article 5-A.

4 For purposes of this subsection, the width of a natural buffer
5 strip is measured from the upland edge of a floodplain wetland.
6 If no floodplain wetlands are present, the width is measured from
7 the normal high water mark of the river, stream or brook. The
8 width is measured from the normal high water mark of a great pond
9 and upland edge of a freshwater or coastal wetland.

10
11 **6. Roads.** A natural buffer strip must be maintained
12 between the working edge of an excavation and a road as follows.

13
14 A. A natural buffer strip at least 150 feet wide must be
15 maintained between the working edge of an excavation and a
16 road designated as a scenic highway by the Department of
17 Transportation.

18
19 B. A natural buffer strip at least 100 feet wide must be
20 maintained between the working edge of the excavation and
21 any other public road.

22
23 C. A natural buffer strip at least 50 feet wide must be
24 maintained between the working edge of an excavation, a
25 private road or a right-of-way. The width of the natural
26 buffer strip adjacent to a private road may be reduced if
27 the applicant receives written permission from the persons
28 having a right-of-way over the private road.

29
30 **7. Property boundary.** A natural buffer strip at least 100
31 feet wide must be maintained between the excavation and a
32 property boundary. This distance may be reduced to 10 feet with
33 the written permission of the affected abutting property owner or
34 owners, except that the distance may not be reduced to less than
35 25 feet from the boundary of a cemetery or burial ground.

36
37 **8. Erosion and sedimentation control.** All reclaimed and
38 unreclaimed areas, except for access roads, must be naturally
39 internally drained at all times. Berms or structures may not be
40 constructed to create or maintain internal drainage. Stockpiles
41 consisting of topsoil to be used for reclamation must be seeded,
42 mulched or otherwise temporarily stabilized.

43
44 **9. Surface water protection and storm water management.**
45 Surface water discharges from areas not required to be naturally
46 internally drained may not be increased as a result of storm
47 water runoff from storms up to a level of a 25-year, 24-hour
48 storm. Structures such as detention ponds, retention ponds and
49 undersized culverts may not be used to meet this standard.

2 Sediment may not leave the parcel or enter a protected natural
3 resource.

4 Removal of accumulated water from precipitation must be put into
5 sheet flow and the discharge point must be directed to an
6 undistributed natural buffer strip. The discharge point must be
7 at least 250 feet away from a protected natural resource. The
8 slope of the discharge area may not exceed 5%.

10 Grubbed areas not internally drained must be stabilized. Erosion
11 and sedimentation control for access roads must be conducted in
12 accordance with the department's best management practices for
13 erosion and sedimentation control.

14 Grading or other construction activity on the site may not alter
15 natural drainageways so that the drainage, other than that which
16 occurred before development, adversely affects adjacent parcels
17 of land, or that the drainageways flowing from adjacent parcels
18 of land to the parcel are impeded.

20 10. Traffic. Entrances and exists of the quarry must be
21 located, posted and constructed in accordance with standards for
22 roadways in rules adopted by the board. Adequate sight distances
23 for entering, exiting and stopping must be maintained in
24 accordance with these standards.

26 11. Noise. Noise levels may not exceed applicable noise
27 limits in rules adopted by the board.

30 12. Dust. Dust generated by activities at the quarry,
31 including dust associated with traffic to and from the quarry,
32 must be controlled by sweeping, paving, watering or other best
33 management practices for control of fugitive emissions. Dust
34 control methods may include calcium as long as the manufacturer's
35 labeling guidelines are followed.

36 13. Reclamation. The affected land must be restored to a
37 condition that is similar to or compatible with the conditions
38 that existed before excavation. Reclamation must be conducted in
39 accordance with the department's best management practices for
40 erosion and sedimentation control and must include the following.

42 A. Highwalls, or quarry faces, must be treated in such a
43 manner as to leave them in a condition that minimizes the
44 possibility of rock falls, slope failures and collapse. A
45 highwall that is loose must be controlled by the use of
46 blasting or scaling, the use of benches that have a minimum
47 width of 25 feet, the use of flatter slopes or reduced face
48 heights, or the use of benching near the top of the face or
49 rounding the edge of the face.

2 B. A vegetative cover must be established by seeding within
4 one year of the completion of excavation. Vegetative cover
6 must be established on all affected land, including safety
8 benches, except for quarry walls and flooded areas. Topsoil
must be placed, seeded and mulched within 30 days of final
grading. Vegetative cover is acceptable, if within one year
of seeding:

10 (1) The planting of trees and shrubs results in a
12 permanent stand or a stand capable of regeneration and
14 succession, sufficient to ensure a 75% survival rate;
and

16 (2) The planting of all material results in permanent
18 90% ground cover.

20 Vegetative cover used in reclamation must consist of
22 grasses, legumes, herbaceous or woody plants, shrubs, trees
24 or a mixture thereof.

26 C. All structures, once no longer in productive use, and
28 all access roads, haul roads and other support roads must be
30 reclaimed.

32 D. All affected lands must be reclaimed within 2 years
34 after final grading.

36 E. Topsoil that is stripped or removed must be stockpiled
38 for use in reclaiming disturbed land areas.

40 **14. Blasting.** The applicant must ensure the blasting is
42 conducted in accordance with Title 25, section 2441.

44 A. The owner or operator shall use sufficient stemming,
46 matting or natural protective cover to prevent flyrock from
48 leaving property owned or under control of the owner or
operator, or from entering protected natural resources or
natural buffer strips.

B. The maximum allowable airblast at any inhabited building
not owned or controlled by the developer may not exceed 129
decibels peak when measured by an instrument having a flat
response (+ or - 3 decibels) over the range of 5 to 300
hertz;

C. The maximum allowable airblast at an uninhabited
building not owned or controlled by the developer may not
exceed 140 decibels peak when measured by an instrument

2 having a flat response (+ or - 3 decibels) over the range of
3 5 to 300 hertz.

4 D. The blast site must be at least 2,000 feet away from the
5 nearest building not owned or controlled by the developer.

6 E. The peak particle velocity may not exceed one inch per
7 second.

8 The department may not grant a variance for the performance
9 standards of this section.

10 **§490-T. Inspections.**

11 The department may periodically inspect a site, examine
12 relevant records of the owner or operator of the quarry, take
13 samples and perform tests necessary to determine compliance with
14 the provisions of this article.

15 **§480-U. Enforcement and penalties**

16 The department shall administer and enforce the provisions
17 of this article.

18 1. Stop-work order. The department may order the owner or
19 operator of a quarry that is not operating in compliance with
20 this article to cease operations until the noncompliance is
21 corrected or until the owner or operator of the quarry obtains a
22 permit under article 6.

23 2. Penalty. A person who violates a provision of this
24 article commits a civil violation and is subject to the penalties
25 established under section 349. Penalties assessed for
26 enforcement actions taken by the State are payable to the State.

27 **§490-V. Repeal.** This article is repealed December 31, 1995.

28 **Emergency clause.** In view of the emergency cited in the
29 preamble, this Act takes effect when approved.

30 **STATEMENT OF FACT**

31 This bill makes changes to the site location of development
32 laws and to laws that regulate borrow pits between 5 and 30 acres
33 in size.

34 The changes to the site location of development laws are as
35 follows.

1. The Commissioner of Environmental Protection may issue a permit conditioned upon a permittee receiving a loan or line of credit that ensures that a developer has the financial capacity to meet environmental standards.

2. The commissioner may issue a permit conditioned upon an owner or operator of a borrow pit complying with noise standards within 30 days of starting up gravel processing operations.

3. A borrow pit owner or operator may use calcium chloride to control dust on roads servicing a borrow pit.

4. The deadlines are extended for one year for borrow pits that are 5 to 30 acres in size and were unlicensed on October 1, 1993 to meet standards for pits of that size so as to not be reviewed under the site location of development laws.

The changes to laws that regulate borrow pits between 5 and 30 acres in size are as follows.

1. The bill alters the distances required between a borrow pit and private and public water supplies. The bill also requires a 1,000-foot separation between any excavation and any public drinking water supply that holds a valid filtration waiver in accordance with the federal Safe Drinking Water Act. The bill eliminates the distances an excavation must be from a private or public water supply when the affected water supply is owned by the owner of the excavation site.

The Department of Environmental Protection may not require a pit owner or operator to elevate a pit floor to 5 feet or more above the seasonal high water table when that pit was unlicensed and the pit floor was less than 5 feet as of October 1, 1993. The department may permit continued excavation in those pits between 2 and 5 feet from the seasonal high water table when it is determined excavation will not harm groundwater. Pit owners or operators may reclaim as ponds those areas of pits that are less than 5 feet above the seasonal high water table, provided the pond resulted from excavation below the seasonal high water table prior to October 1, 1993.

2. The bill alters the distances a borrow pit must be from protected natural resources.

3. The bill defines the boundaries of certain protected natural resources.

4. The bill repeals a section that prohibits excavation below road level within 150 feet of a road right-of-way and it provides a new section that applies to all excavations near

2 roads. This new section requires a natural buffer strip of at
4 least 150 feet between the working edge of an excavation and a
6 road designated as a scenic highway by the Department of
8 Transportation; a natural buffer strip of at least 100 feet
between the working edge of an excavation and a public road not
designated as a scenic highway; and a natural buffer strip of at
least 50 feet between the working edge of an excavation and any
private road or right-of-way.

10 5. The bill reduces from 150 feet to 50 feet the width of a
12 natural buffer strip required between a borrow pit and a property
line.

14 6. The bill allows the distance between abutting borrow
16 pits to be eliminated, providing the distance elimination does
not increase the volume of water runoff from any of the abutting
pits.

18 7. The bill allows the use of calcium chloride to control
20 dust on roads servicing borrow pits, providing the manufacturer's
best management practices are followed.

22 8. The bill permits the Department of Environmental
24 Protection to grant a variance from reclamation slope standards,
with no limit of the slope grade, providing the slopes exhibit
26 substantial vegetation and are stable.

28 The bill allows the Department of Environmental Protection
30 to defer inspection of certain sized gravel pits for which an
expansion is sought when winter conditions at the site prevent
the department from evaluating an expansion request.

32 9. The bill allows the ownership or operation of a borrow
34 pit to be transferred as long as the new owner or operator files
a notice within 2 weeks of the transfer stating that all borrow
36 pit standards will be met.

38 10. The bill exempts certain borrow pits from common scheme
40 of development review.

42 In addition, this bill accomplishes the following:

44 1. It clarifies the definition of public drinking water
supply to include the source of supply, not just the well.

46 2. It makes a technical change to ensure that map and site
48 plans submitted for medium-size gravel pits include the location
of public drinking water sources of supply.

50 3. It corrects a cross-reference to the solid waste rules.

2 4. It establishes more clearly delineated setbacks between
gravel pits and public drinking water sources of supply including
4 a 1,000-foot setback for a system that holds a valid filtration
waiver under the federal Safe Drinking Water Act.

6
8 5. It clarifies that the standards for traffic for gravel
pits are those standards adopted in rules by the Board of
Environmental Protection.

10
12 6. It exempts from the site laws rock quarries of 2 acres
or less in size, if the product from the quarry is used solely to
supply aggregate for the Department of Transportation road
14 construction and maintenance projects. Under this bill, those
small quarries of 2 acres or less would have to file a notice of
16 intent to comply with performance standards that include a
2,000-foot setback from the nearest building not owned or
18 controlled by the developer. The performance standards also
include setbacks from significant wildlife habitat, water bodies,
20 private and public drinking water supplies, roads and property
boundaries. Standards for noise, traffic, dust, erosion and
22 sedimentation control, stormwater management, blasting and
reclamation are also established. The bill also provides for
24 inspections, enforcement and penalties.